

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**ENVIRONMENTAL LAW & POLICY CENTER**

35 East Wacker Drive, Suite 1600  
Chicago, IL 60601,

Complainant,

v.

**CLEANCHOICE ENERGY, INC.**

1055 Thomas Jefferson St. NW, Suite 650  
Washington, DC 20007,

Respondent.

**DOCKET NO: 20-\_\_\_\_\_**

**VERIFIED FORMAL COMPLAINT**

The Environmental Law & Policy Center (ELPC) hereby files this verified formal complaint against CleanChoice Energy, Inc. (CleanChoice) alleging violations of Part 412 of the Illinois Commerce Commission's (Commission) regulations, the Public Utilities Act, and the Consumer Fraud and Deceptive Business Practices Act.

CleanChoice is an alternative retail electric supplier (ARES) doing business in Illinois. CleanChoice aggressively markets renewable energy electricity supply to residential customers through its website, emails, and direct mail without complying with numerous important disclosures and other consumer protections. CleanChoice asks customers to pay a premium for grid power matched with Renewable Energy Credits (RECs), but fails to provide critical information, such as what type of RECs are being offered, where the RECs were generated, and the "price to compare" (the default utility's current supply price). Without this information, customers cannot evaluate the costs and benefits of these offers.

## **I. INTRODUCTION**

Illinois has a partially deregulated electricity market. By default, residents' electricity is supplied by the regulated electric utility in whose territory they live (e.g., Commonwealth Edison). A customer can, however, choose to select an alternative retail electric supplier (ARES) to supply their electricity. A customer who is receiving electricity from the default utility is under no obligation to take affirmative action or sign up with another supplier to continue receiving electricity.

If a customer signs up for a “green” or renewable energy supply offer from an ARES, that customer continues to receive the same power from the grid as before—there is no change in the type of electrons that the customer receives. Rather, the ARES purchases and retires renewable energy credits (RECs) to match the customer's electricity usage. RECs represent the environmental attributes of electricity generated from renewable resources. RECs can be sold and purchased separately from the underlying electricity. If the RECs are then “matched” with “brown” grid power, that power can be advertised as “green” or “renewable.”

RECs are not all the same. RECs are generated by different energy sources (wind, solar, etc.) at different facilities across the country. The facilities at which RECs are generated can be older or newer, and the RECs themselves are of varying “vintage” (year in which the underlying electricity was generated). All of these differences lead to different market values and different values for customers. As a hypothetical, if a customer in Illinois wants to support the development of new renewable energy and local air quality benefits, they would likely not choose a green electricity product backed by RECs that were generated several years ago by a wind farm in another state that was built many years ago. It is important that ARES follow disclosure requirements and do not make misleading statements about the benefits provided by

their electricity product. Customers need adequate information in order to make informed decisions.

## **II. PARTIES**

1. ELPC is a not-for-profit public interest advocacy organization. ELPC works across the Midwest to improve environmental quality and protect natural resources. This work includes promoting renewable energy development and smart energy policies.

2. ELPC actively participated in the Part 412 rulemaking process (ICC Docket No. 15-0512). In this docket, ELPC identified concerns about the marketing of renewable or “green” electricity products. Specifically, ELPC explained the importance of ensuring that customers who choose a “green” or “renewable” energy product—often at a significant price premium—understand what they are getting for their money.

3. ELPC has remained engaged in marketing workshops and other Illinois Commerce Commission Office of Retail Market Development policy events related to ARES marketing and consumer protections.

4. ELPC has intervened in numerous proceedings before the Commission to advance its goals of promoting renewable energy, energy efficiency, and sustainable energy approaches that are also beneficial for customers.<sup>1</sup>

5. ELPC’s organizational purpose of driving meaningful renewable energy development is harmed by CleanChoice’s misleading and illegal marketing practices. When customers agree to purchase “green” electricity they do so with the intent that their purchase will increase the amount of renewable energy being generated and provide actual benefits in terms of

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<sup>1</sup> Note that the interest requirement for intervention is identical to that for bringing a formal complaint—both an intervention petition and a formal complaint must contain “[a] plain and concise statement of the nature of [the entity’s] interest.” 83 Ill. Admin. Code §§ 200.170; 200.200.

renewable energy market growth and cleaner air. These goals align with ELPC's purpose as an organization. Misleading customers about the nature of the energy they purchase harms ELPC members and harms the market.

6. CleanChoice is a certified ARES. ICC Docket NO. 13-0302. CleanChoice has been certified since 2013 and has previously done business under the names "Ethical Electric" and "Clean Energy Option."

7. CleanChoice offers renewable energy electricity products that consist of undifferentiated "grid power" supply, matched with RECs.

8. CleanChoice's business address is 1055 Thomas Jefferson St. NW, Suite 650, Washington, DC 20007.

### **III. COMMISSION JURISDICTION**

9. The Public Utilities Act provides that "[t]he Commission shall have jurisdiction in accordance with the provisions of Article X of this Act to entertain and dispose of any complaint against any alternative retail electric supplier" alleging violations of Sections 16-115 and 16-115A. 220 ILCS 5/16-115B.

10. Sections 16-115 and 16-115A not only provide specific requirements for ARES, but also prohibit ARES from violating other applicable laws and rules. Section 16-115A(a)(ii) requires that ARES "continue to comply with the requirements for certification stated in subsection (d) of Section 16-115." One of the certification requirements in 16-115(d) is compliance "with all other applicable laws and regulations." 220 ILCS 5/16-115(d)(11).

11. Other laws that apply to ARES include Section 2EE and other provisions of the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) and Commission rules, including 83 Ill. Admin. Code Part 412. If an ARES violates applicable provisions of the

Consumer Fraud Act or Commission rules, that is therefore necessarily also a violation of Section 16-115 and 16-115A of the Public Utilities Act.

12. Article X of the Public Utilities Act provides that “any person or corporation” can file a complaint with the ICC alleging violations of the Public Utilities Act or any order or rule of the Commission. 220 ILCS 5/10-108. “No complaint shall be dismissed because of the absence of direct damage to the complainant.” *Id.*

#### **IV. APPLICABLE LAW AND REGULATIONS**

##### **Commission Rules – Part 412**

13. Part 412 of the Commission’s rules sets out marketing requirements for ARES. 83 Ill. Admin. Code Part 412.

14. Section 412.190 provides requirements related to renewable electricity offers. An ARES can only advertise an electricity product as “green” or “renewable” if it “purchases and retires the appropriate number of RECs.” 83 Ill. Admin. Code 412.190(a).

15. Section 412.190 requires ARES to disclose on all marketing materials and on its website the percentage of a customer’s electricity that will be paired with RECs pursuant to the “green” or “renewable” supply offer. The ARES must also disclose on all marketing materials and on its website “the renewable energy resource type mix (i.e., corresponding percentage of each resource, such as X% wind, X% solar, etc.)” and “the percentage of electricity paired with renewable energy resources through RECs generated in the State of Illinois that will be used.” 83 Ill. Admin. Code 412.190(b).

16. These disclosures must also be made for “green” or renewable offers advertised on the Plug-In Illinois website (www.PlugInIllinois.org). 83 Ill. Admin. Code 412.190(b)(4).

17. Section 412.160 sets out requirements for online marketing. This section provides that:

Each RES offering electric power and energy service to customers online shall clearly and conspicuously make all disclosures required by Section 412.110 for any services offered through online enrollment before requiring the customer to enter any personal information other than zip code, electric utility service territory, and/or type of service sought. . . .

The UDS [uniform disclosure statement] must be printable in a PDF format and shall be available electronically to the customer.

83 Ill. Admin. Code 412.160(a)-(b) (emphasis added).

18. Section 412.110 sets out the minimum contract terms and conditions that must be included in all sales contracts. Pursuant to Section 412.160, the following items must be clearly and conspicuously disclosed, prior to requiring the customer to enter personal information:

- a) The legal name of the RES and the name under which the RES will market its products, if different;
- b) The business address of the RES;
- c) The charges for service for the term of the contract and, if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;
- d) For any product for which the price includes a fixed monthly charge, that does not change with the customer's usage and does not include all supply and delivery service charges, the RES shall provide an estimated total bill for electric service using sample monthly usage levels of 500, 1,000 and 1,500 kWh;
- e) For any product offered at a fixed monthly charge that does not change with the customer's usage and does not include all supply and delivery service charges, the RES must provide a statement to the customer stating that the fixed monthly charge is not the total monthly amount for electric service and identifying which charges are not included in the fixed monthly charge;
- f) The term of the contract, including any applicable renewal clause disclosed in a manner consistent with this Part;
- g) Whether an early termination fee or penalty will be imposed for termination of the contract by the customer prior to the expiration of its term and the applicable amount. If the early termination fee or penalty is not a set amount, the RES shall disclose the manner in which that fee will be calculated;
- h) If the RES intends at any point during the term of the contract to seek a deposit or prepayment from the customer, the RES shall identify whether and under what circumstances a deposit or prepayment will be required, along with a disclosure of the manner in which the deposit or prepayment will be calculated and the circumstances in which the deposit or prepayment will be refunded;

- i) Any fees assessed by the RES to a customer for switching to the RES;
- j) If an RES represents that a customer will realize savings under any conditions or circumstances, the RES shall provide a written statement, in plain language, describing the conditions or circumstances that must occur in order for the savings to be realized. The statement shall disclose the entity or entities and price or prices to which the RES is comparing its own offer for purposes of assessing or calculating savings;
- k) A statement that the customer may contact the RES to rescind the contract and the pending enrollment within 10 calendar days after the electric utility processes the enrollment request. Residential customers may rescind the contract and the pending enrollment by contacting either the RES or the electric utility;
- l) A statement that the RES is an independent seller of electric power and energy service certified by the Illinois Commerce Commission and that the RES is not representing, endorsed by, or acting on behalf of, a utility or a utility program, a consumer group or consumer group program, or a governmental body or program [sic] of a governmental [sic] body (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements);
- m) A statement that:
  - 1) the electric utility remains responsible for the delivery of electric power and energy to the customer's premises and will continue to respond to any service calls and emergencies; and
  - 2) the customer will receive written notification from the electric utility confirming a switch of the customer's electricity supplier; and
- n) The toll-free telephone numbers for the RES, the electric utility, and the Commission's Consumer Services Division.

19. Section 412.170(c) provides that “RES agents shall not utilize false, misleading, materially inaccurate or otherwise deceptive language or materials in soliciting or providing services.” 83 Ill. Admin. Code 412.170(c).

### **Public Utilities Act**

20. Section 115A of the Public Utilities Act is titled “Obligations of alternative retail electric suppliers” and sets out specific requirements for ARES marketing. 220 ILCS 5/16-115A.

21. ARES must adequately disclose information about their products:

An alternative retail electric supplier shall comply with the following requirements with respect to the marketing, offering and provision of products or services to residential and small commercial retail customers: ...

All marketing materials, including, but not limited to, electronic marketing materials, in-person solicitations, and telephone solicitations, shall contain

information that adequately discloses the prices, terms, and conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer and shall disclose the current utility electric supply price to compare applicable at the time the alternative retail electric supplier is offering or selling the products or services to the customer and shall disclose the date on which the utility electric supply price to compare became effective and the date on which it will expire. . . .

220 ILCS 5/16-115A(e) (emphasis added).

22. A specific disclosure statement (hereinafter “115A(e) disclosure statement”) is also required:

All marketing materials, including, but not limited to, electronic marketing materials, in-person solicitations, and telephone solicitations, shall include the following statement:

“(Name of the alternative retail electric supplier) is not the same entity as your electric delivery company. You are not required to enroll with (name of alternative retail electric supplier). Beginning on (effective date), the electric supply price to compare is (price in cents per kilowatt hour). The electric utility electric supply price will expire on (expiration date). The utility electric supply price to compare does not include the purchased electricity adjustment factor. For more information go to the Illinois Commerce Commission's free website at [www.pluginillinois.org](http://www.pluginillinois.org).”.

220 ILCS 5/16-115A(e) (emphasis added).

23. The Public Utilities Act also provides that “[a]n alternative retail electric supplier shall provide documentation to the Commission and to customers that substantiates any claims made by the alternative retail electric supplier regarding the technologies and fuel types used to generate the electricity offered or sold to customers.” 220 Ill. Comp. Stat. Ann. 5/16-115A(e)(iii).

### **Consumer Fraud Act**

24. Section 2EE of the Consumer Fraud Act sets out specific requirements for ARES.

25. These requirements include required disclosures for online solicitations:

Each alternative retail electric supplier offering electric power and energy service to consumers online shall clearly and conspicuously make all disclosures for any



services offered through online enrollment before requiring the consumer to enter any personal information other than zip code, electric utility service territory, or type of service sought. . . .

815 ILCS 505/2EE(c)(6)(A). “The enrollment website of the alternative retail electric supplier shall, at a minimum, include . . . disclosure of all material terms and conditions of the offer.” 815 ILCS 505/2EE(c)(6)(C).

26. The Consumer Fraud Act also sets out more widely-applicable requirements. The Consumer Fraud Act makes it illegal to use “[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact.” 815 ILCS 505/2. Such actions are illegal even if they do not result in any person being “misled, deceived or damaged thereby.” *Id.*

## **V. STATEMENT OF FACTS**

### **CleanChoice’s Website**

27. The online enrollment process on CleanChoice’s website is as follows:

- From the CleanChoice website homepage, there are multiple links by which the potential customer can enter the enrollment process, including links that say “Sign Up,” “Learn More,” and “Pricing and Plans.”
- Once a potential customer enters their zip code, they are shown plan options. The current plan options for the ComEd territory are a “100% Solar” option with a 12-month fixed price of 11.3 cents/kWh, and a “99% Wind + 1% Solar” option with a 12-month fixed price of 8.7 cents/kWh.

- Once a potential customer “selects” a plan option, they are taken to a page where they are prompted to enter personal contact information. The potential customer is required to enter their full name and email address, and are also prompted to enter their telephone number. In small print under the contact information boxes, the webpage states in fine-print text: “By providing my phone number, I agree to receive telemarketing and informational calls and texts from CleanChoice Energy using an auto dialer and/or an artificial or pre-recorded voice. Consent is not a condition of purchase.” Exhibit A.
- On the next page, the potential customer is prompted to enter their service address and billing address before they can move on to the next page. Exhibit B. On the final page, the individual is prompted to enter their utility account information. Exhibit C. In small print below that, the website shows 3 paragraphs of disclosures, under which there is a box that the customer can check, with the statement “By checking this box, I agree to the terms above.” The fine print includes web hyperlinks to the “Terms & Conditions,” the “Illinois Letter of Agency,” the “Illinois Environmental Disclosures Statement,” and the “Automatic Contract Renewal Notice.” The fine print includes the statement “You may print or save the uniform disclosure statement,” but the UDS is provided in the same hyperlinked webpage as the “Terms & Conditions” and is not labeled as a “Uniform Disclosure Statement.” The fine print also includes the 115A(e) disclosure statement. For a customer who enters a zipcode in ComEd territory, the disclosure states in part: “Beginning on October 1, 2019, the electric supply price to compare is 7.224¢/kWh. The electric utility electric supply price will expire on May 31, 2020.”

28. For the “99% Wind + 1% Solar” plan, the “Illinois Environmental Disclosure Statement” states that “for the 12 months ending 3/31/2017,” 99% of the electricity was from

wind power, and 1% was from solar. Exhibit D. For the “100% Solar” plan, the “Illinois Environmental Disclosure Statement” also states that “for the 12 months ending 3/31/2017,” 99% of the electricity was from wind power, and 1% was from solar. Exhibit E. The “Illinois Environmental Disclosure Statement” does not for either plan option provide what percentage of the renewable energy is generated in the State of Illinois.

29. On the second page of the “Terms & Conditions” documents, it is disclosed that 11% of the RECs used for the “99% Wind + 1% Solar” option are generated in Illinois (Exhibit F), and all of the RECS used for the “100% Solar” option are generated outside of Illinois (Exhibit G).

30. While the CleanChoice enrollment webpage states that the price to compare is 7.224 cents/kWh, the correct current price to compare in ComEd territory is 7.175 cents/kWh.

31. CleanChoice’s website includes the following statements:

- “We make an impact by supporting the development of newer, renewable energy farms in your region. Sourcing from these new farms encourages development in the clean energy industry.” Exhibit H.
- “We aim to buy from newer wind and solar facilities to support the growth of the renewable energy industry.” Exhibit H.
- “[W]e match every kilowatt hour of power you use and replenish the grid with 100% wind and solar in your region.” Exhibit H.
- “We meet or exceed all EPA guidelines for renewable energy. . . . CleanChoice Energy applies strict standard to its energy, sourcing our energy from as close to our customers as possible.” Exhibit I.

### **CleanChoice's Offer on the Plug-In Illinois Website**

32. Plug-In Illinois ([www.PlugInIllinois.org](http://www.PlugInIllinois.org)) is a website operated by the Commission, on which ARES can list their current supply offers. In the ComEd territory, CleanChoice lists an offer called the "CleanAir Plan," with a stated price of 9.2 cents/kWh. The accompanying description provides: "Choose 100% clean, pollution-free wind & solar with CleanChoice Energy today and get a \$50 Gift Card.\* Sign up online at [CleanChoiceEnergy.com/IL12](http://CleanChoiceEnergy.com/IL12) or call 1-800-260-0184. \*Terms Apply." Exhibit K at 19.

33. CleanChoice does not currently offer a product with a fixed rate of 9.2 cents/kWh on its website.

34. CleanChoice does not provide the renewable energy source mix or the percentage of renewable energy generated in Illinois on Plug-In Illinois.

### **CleanChoice Marketing Emails**

35. CleanChoice has sent numerous marketing emails to potential customers, urging them to sign up for electricity service with CleanChoice. *See, e.g.*, Exhibit. L.

36. At least many, and potentially all, of these emails do not disclose:

- the prices, terms, and conditions of the service;
- the renewable energy resource mix or the percentage of RECs generated in Illinois;
- the price to compare<sup>2</sup>; or
- the 115A(e) disclosure.

### **CleanChoice Direct Mailings**

37. CleanChoice regularly sends hard-copy paper mailings to potential customers. *See, e.g.*, Exhibit M, N.

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<sup>2</sup> Many of the email solicitations do not include any price to compare information. Some emails include an inaccurate price to compare.

38. Many, if not all, of these mailings only provide the following information in fine print on the back of an 8.5” x 14” terms and conditions sheet:

- price to compare;
- 115A(e) disclosure statement;
- renewable energy resources and mix used; and
- percentage of renewable energy sourced from Illinois.

39. Some of these mailings include the following statement:

- “We will pair the energy your home uses with clean energy through the purchase of renewable energy certificates from Illinois wind farms.”

40. Some of these mailings describe CleanChoice Energy as a “licensed supplier of clean energy.”

41. Some of these mailings feature the text “SECOND NOTICE” in red font stamped at the top of the first page. Exhibit M.

### **Representations from CleanChoice Representatives**

42. A CleanChoice sales agent has represented that all wind and solar RECs for each customer are sourced from within 200 miles of the customer.

### **Additional Facts**

43. On information and belief, CleanChoice has never provided documentation to the Commission substantiating its claims of providing renewable energy.

44. CleanChoice does not “replenish” the grid with renewable energy.

45. On information and belief, EPA does not provide guidelines for renewable energy electricity products. EPA does not certify RECs, and CleanChoice is not listed as a “Green Power Partner” on EPA’s website at <https://www.epa.gov/greenpower/green-power-partner-list>.

46. There is no license in Illinois for suppliers of “clean energy.”

47. On information and belief, CleanChoice sources RECs to match its renewable energy supply offers from facilities that are not “new” or “newer.”

48. On information and belief, CleanChoice does not source all wind and solar RECs for each customer from within 200 miles of that customer.

## **VI. CLAIMS**

### **Violations of Part 412 of the Commission’s Rules**

49. Pursuant to 220 ILCS 16-115A(a)(ii) and 220 ILCS 5/16-115(d)(11), any violations of applicable Commission rules are also violations of Sections 16-115 and 115A of the Public Utilities Act.

50. CleanChoice fails to comply with disclosure requirements of Section 412.190 on its website, on its offer listed on Plug-In Illinois, in its email marketing, and in its paper mailings.

#### **COUNT 1**

51. ELPC re-alleges the above paragraphs.

52. CleanChoice violates Section 412.190 because it does not disclose the renewable energy resource mix or the percentage of RECs generated in Illinois, as required under Section 412.190, for its green products in its email solicitations and on Plug-In Illinois.

#### **COUNT 2**

53. ELPC re-alleges the above paragraphs.

54. CleanChoice violates Section 412.190 because the “Environmental Disclosure” page linked on the “100% Solar” product enrollment page states that the product is 99% wind and 1% solar.

#### **COUNT 3**

55. ELPC re-alleges the above paragraphs.

56. CleanChoice violates Section 412.190 because its website does not disclose the percentage of RECs that are sourced from Illinois until after the entry of personal information, and even then, it is only provided in fine print on a separate hyperlinked webpage. This does not comply with the requirement that these disclosures are provided on “all marketing materials” and on the ARES website.

#### COUNT 4

57. ELPC re-alleges the above paragraphs.

58. CleanChoice violates the requirement under 412.160 that it must clearly and conspicuously make all disclosures required by Section 412.110 on its website before requiring the entry of a customer’s personal information, since it fails to provide the following disclosures before the entry of personal information, including full name and address:

- Estimated bill total for electric service using sample monthly usage levels (412.110(d))
- Applicable renewal clause (412.110(f))
- Statement that the customer may rescind the contract within 10 days (412.110(k))
- Statement that the ARES is an independent seller of electric service and is not representing or acting of a utility, consumer group, etc. (412.110(l))
- Statement that the electric utility remains responsible for delivery of electric service and that the customer will receive written notification of the switch from their electric utility (412.110(m)); and
- The telephone numbers for the electric utility and the Commission’s Consumer Services Division (412.110(n)).

#### COUNT 5

59. ELPC re-alleges the above paragraphs.

60. CleanChoice violated 412.170(c) because its sales agent used false, misleading, or deceptive language when a sales agent stated that all wind and solar RECs are sourced from within 200 miles of each customer, when in fact only 11% of wind RECs and 0% of solar RECs used to support electricity offers in Illinois actually come from facilities in Illinois.

COUNT 6

61. ELPC re-alleges the above paragraphs.

**Violations of the Public Utilities Act**

COUNT 7

62. ELPC re-alleges the above paragraphs.

63. CleanChoice fails to “adequately disclose[]” terms and conditions on all marketing materials pursuant to 220 ILCS 5/16-115A(e) because it fails to comply with specific disclosures requirements of Sections 412.110, 412.160, and 412.190 (described above).

COUNT 8

64. ELPC re-alleges the above paragraphs.

65. CleanChoice fails to “adequately disclose[]” terms and conditions on all marketing materials pursuant to 220 ILCS 5/16-115A(e) because it lists an incorrect offer price on Plug-In Illinois.

COUNT 9

66. ELPC re-alleges the above paragraphs.

67. CleanChoice fails to “adequately disclose[]” terms and conditions on all marketing materials pursuant to 220 ILCS 5/16-115A(e) because for direct mail solicitations, it



only provides the renewable energy product mix and the percentage of RECs from Illinois on the back of an 8.5” x 14” terms sheet in fine print.

COUNT 10

68. ELPC re-alleges the above paragraphs.

69. CleanChoice violates 220 ILCS 5/16-115A(e) because it fails entirely to disclose the price to compare and the 115A(e) disclosure statement in many of its email solicitations, and in other email solicitations, the price to compare given is incorrect.

COUNT 11

70. ELPC re-alleges the above paragraphs.

71. CleanChoice fails to adequately disclose the price to compare and the 115A(e) disclosure statement on its website and in paper mailings, as required under 220 ILCS 5/16-115A(e), because it provides an incorrect price to compare (7.224 cents/kWh versus the correct 7.175 cents/kWh) and because the information is hidden in small print font, and on the website, it is only provided in a separate webpage that is hyperlinked on the final enrollment page, rather than being disclosed in the actual marketing materials.

COUNT 12

72. CleanChoice has never provided documentation to the Commission substantiating its claims of providing renewable energy, as required under 220 ILCS 5/16-115A(e)(iii).

**Violations of the Consumer Fraud Act**

73. Pursuant to 220 ILCS 16-115A(a)(ii) and 220 ILCS 5/16-115(d)(11), any violations of applicable provisions of the Consumer Fraud Act are also violations of Sections 16-115 and 115A of the Public Utilities Act.

COUNT 13

74. ELPC re-alleges the above paragraphs.

75. CleanChoice violates the Consumer Fraud Act's requirement that it must on its website "clearly and conspicuously make all disclosures" on its website before requiring the consumer to enter personal information, 815 ILCS 505/2EE(c)(6)(A), because it fails to provide several disclosures under 412.110 until after the entry of personal information (see above, paragraph 58).

COUNT 14

76. ELPC re-alleges the above paragraphs.

77. CleanChoice violates 815 ILCS 505/2EE(c)(6)(A) because it fails to disclose the percentage of RECs sourced from Illinois on its website prior to the entry of personal information.

COUNT 15

78. ELPC re-alleges the above paragraphs.

79. CleanChoice violates 815 ILCS 505/2EE(c)(6)(A) because it fails to disclose on its website the price to compare and the 115A(e) disclosure statement prior to the entry of personal information.

COUNT 16

80. ELPC re-alleges the above paragraphs.

81. CleanChoice uses misrepresentation in its marketing materials with the intent that consumers rely upon that misrepresentation in violation of 815 ILCS 505/2. It is misleading and inaccurate to state that CleanChoice "replenishes" the grid with renewable energy. CleanChoice purchases RECs created by existing renewable energy resource facilities.

COUNT 17

82. ELPC re-alleges the above paragraphs.

83. CleanChoice makes misleading statements about the age of the facilities from which it sources RECs with the intention that customers rely upon these statements.

COUNT 18

84. ELPC re-alleges the above paragraphs.

85. It is misleading and inaccurate and a violation of 815 ILC 505/2 for a CleanChoice sales agent to state that all wind and solar RECs are sourced from within 200 miles of each customer when only 11% of wind RECs and 0% of solar RECs used to support electricity offers in Illinois actually come from facilities in Illinois. This statement was made with the intent that customers rely upon it.

COUNT 19

86. ELPC re-alleges the above paragraphs.

87. CleanChoice's direct mailings state "We will pair the energy your home uses with clean energy through the purchase of renewable energy certificates from Illinois wind farms." This is misleading when only 11% of a customer's energy use is matched with RECs generated in Illinois, and the statement was made with the intent that customers rely upon it.

COUNT 20

88. ELPC re-alleges the above paragraphs.

89. CleanChoice misrepresents itself with the intent that customers rely on the misrepresentation when it states in direct mailings that CleanChoice is a "licensed supplier of clean energy." There is no license for suppliers of "clean energy" in Illinois.

COUNT 21

90. ELPC re-alleges the above paragraphs.

91. It is misleading and a violation of 815 ILC 505/2 for a direct mail solicitation relating to electricity service to be stamped “SECOND NOTICE” in red font and all capital letters at the top of the document. This is intended to mimic notices sent by utility companies for late payments or in advance of shutting off service. This misleads the customer into thinking they must take affirmative action in response to the offer, and the “SECOND NOTICE” marking was used with the intent that customers would be so misled.

#### COUNT 22

92. ELPC re-alleges the above paragraphs.

93. It is misleading and inaccurate and a violation of 815 ILCS 505/2 to state that CleanChoice meets or exceeds EPA guidelines for renewable energy when, on information and belief, EPA does not provide guidelines for renewable energy electricity products, does not certify RECs, and CleanChoice is not a participant in the EPA’s “Green Power Partnership” program. This statement was made with the intent that customers rely upon it.

#### **VII. REQUEST FOR RELIEF**

94. ELPC respectfully requests that the Commission take the following actions pursuant to its authority under 220 ILCS 5/16-115B(b):

- a. For each of the above Counts, declare CleanChoice to be in violation of the applicable rule or law;
- b. For each of the above Counts, order CleanChoice to cease and desist, or correct, violations and nonconformance with the provisions of Section 16-115 or 16-115A and other applicable rules or laws;

- c. For each of the above Counts, impose financial penalties of \$10,000 per occurrence; and/or penalties of \$30,000 per day for those violations or non-conformances which continue after the Commission issues a cease and desist order;
- d. Modify, revoke, or suspend CleanChoice's certificate of service; and/or
- e. Grant such other and further relief as the Commission deems appropriate and just and reasonable.

Date: May 29, 2020

Respectfully submitted,



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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**ENVIRONMENTAL LAW & POLICY CENTER**

**v.**

**CLEANCHOICE ENERGY, INC.**

**DOCKET NO: 20-\_\_\_\_\_**

**SERVICE**

The Environmental Law & Policy Center agrees to accept service by email to the following addresses:

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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**ENVIRONMENTAL LAW & POLICY CENTER**

**v.**

**CLEANCHOICE ENERGY, INC.**

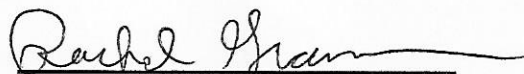
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**VERIFICATION**

Pursuant to 83 Ill. Admin. Code 200.130 and 735 ILCS 5/1-109, this Verified Formal Complaint is verified by certification.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Formal Complaint are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true. In addition, the attached Exhibits are true and correct copies of the relevant webpages, documents, emails, and direct mail solicitations.

DATE: May 29, 2020



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